

Chapter 30 PROCUREMENT CODE*

***Cross references:** Report of contracts to City Clerk, § 2-6; appropriation prerequisite to contract or expenditure, § 2-7; Purchasing Division established in Department of Finance, § 2-143.

State law references: Virginia Public Procurement Act, Code of Virginia, §§ 11-35--11-80.

- Art. I. In General, §§ 30-1--30-28
- Art. II. Competitive Procurement, §§ 30-29--30-70
 - Div. 1. Generally, §§ 30-29--30-39
 - Div. 2. Competitive Bidding, §§ 30-40--30-58
 - Div. 3. Competitive Negotiation, §§ 30-59--30-70
- Art. III. Debarment or Suspension of Prospective Contractors, §§ 30-71--30-86
- Art. IV. Remedies of Bidders, Offerors and Contractors, §§ 30-87--30-106
- Art. V. Ethics in Public Contracting, §§ 30-107--30-116

ARTICLE I. IN GENERAL

Sec. 30-1. Title.

This chapter shall be known and may be cited as the Procurement Code of the City of Danville.

Sec. 30-2. Purpose.

The purpose of this chapter is to increase public confidence in the purchasing by the City, to encourage competition in public purchasing among vendors or contractors, to administer fairly and equitably purchasing policies among bidders, to obtain high quality goods and services at the lowest possible price and to ensure that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety.

(Ord. No. 86-3.2, § 21.3-101, 3-4-86)

Sec. 30-3. Application of chapter; compliance with Federal or State law; compliance with terms of grant, gift, etc.

- (a) This chapter applies to contracts for the procurement of goods, services, insurance and construction entered into by the City and involving expenditures for public purchasing, regardless of the source of funds.
- (b) When the procurement involves the expenditure of Federal or State assistance, the procurement shall be conducted in accordance with any applicable mandatory Federal or State law and regulations which are not reflected in this chapter. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.

(Ord. No. 86-3.2, § 21.3-102, 3-4-86)

Sec. 30-4. Definitions.

As used in this chapter, the words and terms defined in this section shall have the meanings set forth below, unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular section or portion thereof.

Bidders list: A file maintained by the City of all vendors who have made a written application to the City expressing an interest in providing a specified type or types of goods and/or services to the City and who have not been suspended or debarred.

Brand name specification: A specification limited to one or more items by manufacturers' names or catalogue numbers.

Brand name or equal specification: A specification limited to one or more items by manufacturers' name or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet city requirements and which provides for the submission of equivalent products.

Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.

Change order (unilateral): A written order signed and unilaterally issued by the City directing the contractor to make changes which the "changes" clause of the contract authorizes the City to order without the consent of the contractor.

Confidential information: Any information which is available to an employee only because of the employee's status as an employee of this City and is not a matter of public knowledge or available to the public on request.

Construction: Building, altering, repairing, improving or demolishing any structure, building or highway and any draining, dredging, excavation, grading or similar work upon real property.

Construction management contract: A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner. Such term may also include, if provided in the contract, the furnishing of construction services to the owner.

Contract: All types of City agreements, regardless of what they may be called, for the procurement of goods, services, insurance and construction.

Contract modification: Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties to the contract.

Contractor: Any person having a contract with the City or a using agency thereof.

Cost analysis: The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid and costs to be reimbursed.

Cost data: Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred, or which have been actually incurred, by the contractor in performing the contract.

Cost-reimbursement contract: A contract under which a contractor is reimbursed

for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee or profit, if any.

Direct or indirect participation: Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

Disadvantaged business: A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

Employee: An individual drawing a salary or wages from the City, whether elected or not; any noncompensated individual performing personal services for the City or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of this City; and any noncompensated individual serving as an elected official of the City.

Goods: All material, equipment, supplies, printing and automated data processing hardware and software.

Informality: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

Insurance: A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

Invitation to bid: All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.

Nominal value: So small, slight or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name.

Nonprofessional services: Any services not specifically identified as professional services in the definition of "professional services."

Offeror: Same as "responsible bidder".

Person: Any business, individual, union, committee, club or other organization or group of individuals.

Potential bidder or offeror shall, for the purpose of sections 30-90 and 30-95, mean a person who, at the time the City negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

Price analysis: The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing data: Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offer or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Professional services: Work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, medicine, optometry or professional engineering.

Public body: Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

Qualified products list: An approved list of goods, services or construction items described by model or catalogue number, which prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

Request for proposals: All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible bidder or offeror: A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

Responsive bidder: A person who has submitted a bid which conforms in all material respects to the invitation to bid.

Services: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials or the rental of equipment, materials and supplies.

Sheltered workshop: A work-orientated rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

Small business: A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business not dominant in its field of operation.

Specification: Any description of the physical or functional characteristics, or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

Using agency: Any department, agency, commission, bureau or other unit in the City government requiring goods, services, insurance or construction as provided for in this chapter.

(Ord. No. 86-3.2, § 21.3-105, 3-4-86)

Sec. 30-5. Purchasing system created; general powers and duties of City Manager with respect thereto.

There is hereby created a purchasing system to operate under the direction and supervision of the City Manager. Unless specifically provided otherwise within this chapter, the City Manager shall have full power and authority over the purchase of any and all procured items required by the City and to that end may:

- (1) Delegate responsibility and duties to other City officials consistent with this chapter and the personnel system of the City.
- (2) Promulgate rules and regulations for implementing the provisions of this chapter, which shall govern the authority of the Director of Purchasing and other City officials.

(Ord. No. 86-3.2, § 21.3-201, 3-4-86)

Sec. 30-6. Director of Purchasing generally.

There is hereby created the position of Director of Purchasing, who shall be the chief administrative officer of the Division of Purchasing of the Department of Finance and shall be the City's principal public purchasing official. The Director of Purchasing shall be appointed in accordance with the personnel system of the City and shall have such responsibilities and authority for the administration of this chapter as provided herein.

(Ord. No. 86-3.2, § 21.3-201, 3-4-86)

Sec. 30-6.1. Programs to facilitate participation in procurement transactions by small businesses and businesses owned by women and minorities.

The City shall establish programs consistent with all provisions of this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing and shall include cooperation with the State Office of Minority Business Enterprise, the United States Small Business Administration and other public or private agencies.

(Ord. No. 86-3.2, § 21.3-401(6), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-48.

Sec. 30-7. Cooperative procurement.

The City may participate in, sponsor, conduct or administer cooperative procurement agreements with other public bodies for the joint or cooperative procurement of goods, services, construction and insurance, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Items so procured under a cooperative agreement with other public bodies shall be exempt from the provisions of this chapter, provided such procurements are pursuant to the procurement policies and procedures applicable to other such public bodies.

(Ord. No. 86-3.2, § 21.3-301, 3-4-86)

State law references: Authority for cooperative procurement, Code of Virginia, § 11-40.

Sec. 30-8. Execution of contracts.

The City Manager or his designee is authorized to execute contracts on behalf of the City pursuant to this chapter, provided the Director of Finance or his designee shall have certified, after pre-audit, that, to the best of his knowledge, there is to the credit of the using agencies concerned a sufficient unencumbered appropriation balance to defray the amount of the contract, except for purchases for inventory. Purchases for inventory shall be authorized in accordance with the annual appropriation ordinance.

(Ord. No. 86-3.2, § 21.3-203, 3-4-86)

Sec. 30-9. Nondiscrimination provisions required in certain contracts.

- (a) Every contract of over ten thousand dollars (\$10,000.00) shall include the following provisions: During the performance of this contract, the contractor agrees as follows:
 - (1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - (3) Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- (b) A contractor subject to this section shall include the provisions set out in subsection (a) above in every subcontract or purchase order of over ten thousand dollars (\$10,000.00) so that the provisions will be binding upon each subcontractor or vendor.

(Ord. No. 86-3.2, § 21.3-401(4), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-51.

Sec. 30-10. Contract pricing arrangement.

- (a) Except as prohibited herein, public contracts may be awarded on a fixed price or cost reimbursement basis or on any other basis that is not prohibited.
- (b) No contract may be awarded on a basis of cost plus a percentage of cost, except in cases of emergency affecting the public health, safety or welfare and except that a policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, is permitted.

(Ord. No. 86-3.2, § 21.3-401(18), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-43.

Sec. 30-11. Multi-term contracts.

Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interests of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation for such contract and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

(Ord. No. 86-3.2, § 21.3-401(19), 3-4-86)

Sec. 30-12. Progress payments and retainage on construction contracts.

- (a) In any public contract for construction which provides for progress payments in installments based upon any estimated percentage of completion, the contractor shall be paid at least ninety-five (95) percent of the earned sum when payment is due, with not more than five (5) percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.
- (b) Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

(Ord. No. 86-3.2, § 21.3-401(21), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-56.

Sec. 30-13. Modification of contracts.

A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five (25) percent of the amount or ten thousand dollars (\$10,000.00), whichever is greater. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer, without the advance written approval of the Council.

(Ord. No. 86-3.2, § 21.3-401(20), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-55.

Sec. 30-14. Performance and payment bonds generally.

- (a) Upon the award of any public construction contract exceeding one hundred thousand dollars (\$100,000.00) to any prime contractor, such contractor shall furnish to the City the following bonds:
 - (1) A performance bond, in the sum of the contract amount, conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
 - (2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was

awarded, or to any subcontractors, in the prosecution of the work provided for in such contract and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

- (b) Each bond required by this section shall be executed by one or more surety companies selected by the contractor, which companies are legally authorized to do business in the Commonwealth.
- (c) Bonds required by this section shall be made payable to the City and shall be filed with the City or a designated office or official thereof.
- (d) Nothing in this section shall preclude the City from requiring payment or performance bonds for construction contracts not exceeding one hundred thousand dollars (\$100,000.00).
- (e) Nothing in this section shall preclude such a contractor from requiring each subcontractor to furnish a payment bond with surety thereon, in the sum of the full amount of the contract with such subcontractor, conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
- (f) In lieu of a performance or payment bond required by this section, a contractor may furnish a certified check or cash escrow in the face amount required for the bond.

(Ord. No. 86-3.2, § 21.3-401(22), (25), 3-4-86)

State law references: Similar provisions, Code of Virginia, §§ 11-58, 11-61.

Sec. 30-15. Action on performance bonds.

No action against the surety on a performance bond given pursuant to section 30-14 shall be brought unless within one year after:

- (1) Completion of the contract, including the expiration of all warranties and guarantees, or
- (2) Discovery of the defect or breach of warranty, if the action be for such.

(Ord. No. 86-3.2, § 21.3-401(23), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-59.

Sec. 30-16. Action on payment bonds.

- (a) Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given pursuant to section 30-14, and who has not been paid in full therefor before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or materials, and may

prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.

- (b) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor's payment bond under section 30-14, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within one hundred eighty (180) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor's payment bond under section 30-14, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of his business. Claims for sums withheld as retainages with respect to labor performance or materials furnished shall not be subject to the time limitations stated in this subsection.
- (c) Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished supplied materials.

(Ord. No. 86-3.2, § 21.3-401(24), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-60.

Sec. 30-17. Unauthorized purchases.

Except as otherwise provided in this chapter, no officer or employee of the City shall purchase or contract for any goods, services, insurance or construction within the purview of this chapter other than by and through the Purchasing Division of the Department of Finance, and any purchase order or contract made contrary to the provisions hereof is neither authorized nor approved and the City shall not be bound thereby.

(Ord. No. 86-3.2, § 21.3-202, 3-4-86)

Sec. 30-18. Public access to procurement information.

- (a) Except as otherwise provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen or any interested person, in accordance with the Virginia Freedom of Information Act.* Cost estimates relating to a proposed transaction prepared by or for the City shall not be open to public inspection.

***State law references:** Freedom of Information Act, Code of Virginia, § 2.1-340 et seq.

- (b) Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the City decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.
- (c) Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are completed but prior to award, except in the event that the City decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.
- (d) Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this provision prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

(Ord. No. 86-3.2, § 21.3-401(3), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-52.

Secs. 30-19--30-28. Reserved.

ARTICLE II. COMPETITIVE PROCUREMENT

DIVISION 1. GENERALLY

Sec. 30-29. General requirements.

All public contracts with nongovernmental contractors, for the purchase or lease of goods, or for the purchase of services, insurance or construction, shall be awarded after competitive sealed bidding or competitive negotiation as provided in this article, unless otherwise authorized by law.

(Ord. No. 86-3.2, § 21.3-401(1), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-41A.

Sec. 30-30. Requirements for certain state-aid construction contracts.

No contract for the construction of any building or for an addition to or improvement of an existing building, for which State funds of ten thousand dollars (\$10,000.00) or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction, shall be let except after competitive sealed bidding or competitive negotiation. The procedure for advertising for bids and for proposals and for letting of the contract shall conform, *mutatis mutandis*, to the

provisions of this chapter. No person shall be eligible to bid on or submit a proposal for any such contract under competitive sealed bidding or competitive negotiation procedures, nor to have the same awarded to him, if he has been engaged as architect or engineer for the same project under a separate contract.

(Ord. No. 86-3.2, § 21.3-401(2), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-41.1.

Sec. 30-31. Cancellation or rejection of invitations and other solicitations and bids and proposals.

An invitation to bid, a request for proposal and any other solicitation provided for in this article and any bid or proposal may be cancelled or rejected. The reasons for cancellation or rejection shall be made part of the contract file.

(Ord. No. 86-3.2, § 21.3-401(11), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-42.

Sec. 30-32. Exceptions from requirements of competitive procurement--Generally.

The requirements of this chapter regarding competitive bidding and competitive negotiation shall not apply to:

- (1) Purchases from the State penitentiary or the State Purchasing Department warehouse.
- (2) Purchases of legal services associated with actual or potential litigation and/or regulatory procedures, provided that the pertinent provisions of chapter 5 of the City Charter and article V of chapter 2 of this Code shall remain applicable.
- (3) Purchases for special police work, when the Chief of Police certifies to the City Manager that items are needed for undercover police operations.
- (4) Purchases related to education, training or travel.
- (5) Purchases of library books.
- (6) Purchases of subscriptions, periodicals and publications.
- (7) Purchases of State or Federal surplus property.
- (8) Purchases of goods or services which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped, or which are performed or produced by nonprofit workshops serving the handicapped.
- (9) Reimbursement contracts with realty developers.
- (10) Dues and memberships related to professional organizations.
- (11) Wholesale purchases of electric power and natural gas.
- (12) Settlements, medical expenses and other costs related to the administration of workers compensation and other claims where the City acts as a self-insurer.

- (13) Purchases of goods or personal services for direct use by recipients of public assistance programs (as defined in Code of Virginia, section 63.1-87) or fuel assistance programs, if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted.
- (14) Procurement pertaining to investments of the Employees' Retirement System of the City of Danville, Virginia, which shall be in conformity with the standards and requirements set forth in section 51-111.24:2 of the Code of Virginia, 1950, as amended, rather than the provisions of this chapter.

(Ord. No. 86-3.2, § 21.3-404, 3-4-86; Ord. No. 86-12.14, 12-2-86)

Sec. 30-33. Same--Sole source procurement.

Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The City Manager or his designee shall issue a written notice stating that only one source was determined to be practicably available and identifying that which is being procured, the contractor selected and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the City awards, or announces its decision to award, the contract, whichever occurs first.

(Ord. No. 86-3.2, § 21.3-404, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-41D.

Sec. 30-34. Same--Emergencies.

- (a) In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; provided, however, that such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.
- (b) For the purposes of this section, an emergency shall be deemed to exist when a breakdown in machinery or equipment or a threatened termination of essential services or a dangerous condition develops or when any unforeseen circumstances arise causing curtailment or diminution of an essential service or where materials or services are needed to prevent loss of life or property.
- (c) The City Manager or his designee shall issue a written notice stating that the contract is being awarded on an emergency basis and identifying that which is being procured, the contractor selected and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the City Manager or his designee awards, or announces his decision to award, the contract, whichever occurs first, or as soon thereafter as is practicable.

(Ord. No. 86-3.2, § 21.3-404, 3-4-86)

State law references: Provisions similar to subsection (a) above, Code of Virginia, § 11-41E.

Sec. 30-35. Same--Small purchases.

- (a) The purchase of goods, contractual services (excluding professional services), insurance and capital improvements estimated to be less than ten thousand dollars (\$10,000.00) in value shall not be subject to the competitive bidding requirements of this article and professional services estimated to be less than twenty thousand dollars (\$20,000.00) in value shall not be subject to the competitive negotiation requirements of this article; provided, however, that the City shall, whenever the amount of purchases, including professional services, exceeds two thousand dollars (\$2,000.00), solicit three (3) or more proposals in the commodity area of the transaction.
- (b) For purchases of less than two thousand dollars (\$2,000.00), the City will endeavor to purchase such items on as competitive a basis as practical and the City Manager is authorized to establish the administrative controls considered necessary to govern such purchases. Written quotations from vendors shall be obtained where practical, although verbal quotations will be permitted, provided a written record of all such verbal quotations is made and filed with the records of the transaction.

(Ord. No. 86-3.2, § 21.3-404, 3-4-86)

State law references: Authority for above section, Code of Virginia, § 11-41F.

Secs. 30-36--30-39. Reserved.

DIVISION 2. COMPETITIVE BIDDING

Sec. 30-40. Prequalification of bidders.

- (a) The City Manager or his designee is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction, by requiring prospective bidders to submit such information as the City Manager shall deem appropriate, including samples, financial reports and references. Opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this chapter.
- (b) The City Manager or his designee may refuse to prequalify any prospective contractor, provided written reasons for refusing to prequalify are made a part of the record in each case. The decision of the City Manager or his designee shall be final.
- (c) In considering any request for prequalification, the City Manager or his designee shall determine whether there is reason to believe that the bidder possesses the management, financial soundness and history of performance which indicate apparent ability to successfully complete the plans and specifications of the invitations for bid. The City Manager or his designee may employ standard forms designed to elicit necessary information, or may design other forms for that purpose.

- (d) Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as nonresponsible on the basis of subsequently discovered information.
- (e) Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements or from bidding on procurements which do not require prequalification.

(Ord. No. 86-3.2, § 21.3-401(5), 3-4-86)

State law references: Prequalification of prospective contractors, Code of Virginia, § 11-46.

Sec. 30-41. Notice of invitation to bid; soliciting bids; removal from bidders list.

- (a) Public notice of the invitation to bid must be given at least fifteen (15) calendar days prior to the date set for the receipt of bids, by posting in a designated public area, or publication in a newspaper of general circulation, or both. In addition, bids may be solicited directly from potential contractors. Sealed bids shall be solicited from all responsible prospective suppliers who have requested their names to be added to a bidders list maintained by the City, by sending such other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.
- (b) A bidder shall be removed from the bidders list under the following circumstances:
 - (1) Debarment as authorized by this chapter.
 - (2) Three (3) or more consecutive no responses or "no bid" responses to an invitation to bid within a particular category within a one-year period.

A vendor can be reinstated to the bidders list upon receipt of a letter of application that explains his interest in City purchasing, if the reason for removal was the vendor's failure to reply to the invitation to bid.

(Ord. No. 86-3.2, § 21.3-401(6), 3-4-86)

Sec. 30-42. Request for submission of unpriced offers in certain cases.

When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation to bid may be issued requesting the submission of unpriced offers to bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

(Ord. No. 86-3.2, § 21.3-401(17), 3-4-86)

Sec. 30-43. Effect of use of brand names in invitation to bid.

Unless otherwise provided in the invitation to bid, the use of the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer. It conveys the general style, type, character and quality of the article desired and any article which the City Manager, in his sole discretion, determines

to be the equal of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted.

(Ord. No. 86-3.2, § 21.3-401(7), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-49.

Sec. 30-44. Pre-bid conferences.

For complex equipment, supplies or repair, pre-bid conferences with prospective bidders are desirable after draft specifications have been prepared. Such conferences help to detect unclear provisions and tend to widen competition by removing unnecessarily restrictive language. If deemed necessary, conferences on purchasing bids will be called by the Director of Purchasing and attended by a user department representative.

(Ord. No. 86-3.2, § 21.3-401(8), 3-4-86)

State law references: Duty to establish procedure for receipt of comments on specifications, Code of Virginia, § 11-50.

Sec. 30-45. Bid bonds generally.

- (a) Except in cases of emergency, all bids or proposals for construction contracts in excess of one hundred thousand dollars (\$100,000.00) shall be accompanied by a bid bond, from a surety company selected by the bidder which is legally authorized to do business in the Commonwealth, as a guarantee that, if the contract is awarded to such bidder, the bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five (5) percent of the amount bid. A condition of the bond shall be execution of a contract by the bidder no later than ten (10) days after the award.
- (b) When deemed necessary by the City Manager or his designee, bid bonds and the required surety shall be prescribed in the public notices inviting bids.
- (c) An unsuccessful bidder shall be entitled to return of his bid bond.
- (d) No forfeiture under a bid bond shall exceed the lesser of the difference between the bid for which the bond was written and the next low bid or the face amount of the bid bond.

(Ord. No. 86-3.2, § 21.3-401(9), (10), 3-4-86)

State law references: Provisions similar to subsections (a) and (d) above, Code of Virginia, § 11-57.

Sec. 30-46. Security in lieu of bid bond.

- (a) In lieu of a bid bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- (b) If approved by the City Attorney, a bidder may furnish a personal bond, property bond or bank or saving and loan association's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination that the alternative form of security proffered

affords protection to the City equivalent to the corporate sureties bond.

(Ord. No. 86-3.2, § 21.3-401(25), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-61.

Sec. 30-47. Waiver of bid informalities.

The City may waive informalities in bids.

(Ord. No. 86-3.2, § 21.3-401(11), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-42.

Sec. 30-48. Opening and tabulation of bids.

All bids received must be opened in public and announced in public. Tabulations of bids shall be available for public inspection.

(Ord. No. 86-3.2, § 21.3-401(12), 3-4-86)

Sec. 30-49. Withdrawal of bid due to error.

- (a) A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration, if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith and the mistake was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. One of the following procedures for withdrawal of a bid shall be selected and stated in the advertisement for bids:
 - (1) The bidder shall give notice in writing of his claim of the right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure; or
 - (2) The bidder shall submit to the City his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by the City for the submission of bids. Thereafter the bidder shall have two (2) hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the City until the two (2) hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.
- (b) Procedures for the withdrawal of bids for other than construction contracts may be established by the City Manager or his designee. Such procedures, if

established, shall be prescribed in the invitation to bid.

- (c) No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five (5) percent.
- (d) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- (e) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to, or perform any subcontract or other work agreement for, the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- (f) If the withdrawal of a bid under the provisions of this section is denied, the City Manager or his designee shall notify the bidder in writing, stating the reasons for the decision, and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

(Ord. No. 86-3.2, § 21.3-401(13), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-54.

Sec. 30-50. Bid evaluation.

In determining the lowest responsible bidder, in addition to price, the following may be considered, if prescribed in the invitation to bid:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required.
- (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous contracts or services.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (7) The quality, availability and adaptability of the goods or services to the particular use required.
- (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the bid.
- (10) Total cost of operations and maintenance.

(Ord. No. 86-3.2, § 21.3-401(14), 3-4-86)

Sec. 30-51. Bid award generally.

- (a) Bids shall be awarded to the lowest responsible bidder. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one bidder.
- (b) Unless withdrawn or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that, if the bid from the lowest responsible bidder exceeds available funds, the City may negotiate with the apparent low bidder to obtain a contract within available funds.
- (c) When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Director of Purchasing and filed with the other papers relating to the transaction.

(Ord. No. 86-3.2, § 21.3-401(15), 3-4-86)

State law references: Provisions similar to subsection (b) above, Code of Virginia, § 11-53.

Sec. 30-52. Procedure in case of tie bids.

In the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie bidders shall be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price. In the event this does not resolve the tie, the tie bid shall be resolved by lot.

(Ord. No. 86-3.2, § 21.3-401(16), 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-47.

Secs. 30-53--30-58. Reserved.

DIVISION 3. COMPETITIVE NEGOTIATION

Sec. 30-59. Defined.

Competitive negotiation is a method of source selection which involves individual discussion between the City and the offeror on the basis of responses to the City's request for proposals. The source selection method of competitive negotiation incorporates sections 30-9, 30-10, 30-11, 30-13, 30-18, 30-30, 30-31, 30-40, 30-43 and 30-44 of this chapter, in addition to the provisions outlined in sections 30-60 and 30-61.

(Ord. No. 86-3.2, § 21.3-402(1), 3-4-86)

State law references: "Competitive negotiation" defined, Code of Virginia, § 11-37.

Sec. 30-60. Negotiation for other than professional services.

- (a) Upon a determination in writing that competitive sealed bidding is either not practicable or not advantageous to the public, goods, services, insurance or construction may be procured by competitive negotiation. The writing shall document the basis for this determination.

- (b) Request for proposals shall be in writing and indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.
- (c) At least ten (10) days prior to the date set for receipt of proposals, public notice shall be given by posting in a public area normally used for posting of public notices or by publication in a newspaper of general circulation in the area in which the contract is to be performed, or both. In addition, proposals may be solicited directly from potential contractors.
- (d) Selection shall be made of two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposals, including price if so stated in the request for proposals. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the City Manager or his designee shall select the offeror who, in his opinion, has made the best proposal, and shall award the contract to that offeror. Should the City Manager or his designee determine in writing and in his sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

(Ord. No. 86-3.2, § 21.3-402(2)--(5), 3-4-86)

State law references: Similar provisions, Code of Virginia, §§ 11-37, 11-41.

Sec. 30-61. Negotiation for professional services.

- (a) Professional services estimated to be in excess of twenty thousand dollars (\$20,000.00) shall be procured by competitive negotiation. The process includes those sections mentioned in section 30-59 as well as the provisions of subsections (b) and (c) of section 30-60.
- (b) The City Manager or his designee shall engage in individual discussions with two (2) or more offers deemed fully qualified, responsible and suitable, on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage, the city may discuss nonbinding estimates of total project costs, including, but not limited to, life cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors.
- (c) At the conclusion of discussion outlined in subsection (b) above, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the City Manager or his designee shall select in the order of preference two (2) or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a

contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until a contract can be negotiated at a fair and reasonable price. Should the City Manager or his designee determine in writing and in his sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

(Ord. No. 86-3.2, § 21.3-403, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-37.

Secs. 30-62--30-70. Reserved.

ARTICLE III. DEBARMENT OR SUSPENSION OF PROSPECTIVE CONTRACTORS*

***State law references:** Authority of council to establish debarment procedures, Code of Virginia, § 11-46.1.

Sec. 30-71. General authority.

- (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the City Manager or his designee, after consulting with the City Attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years.
- (b) After consultation with the City Attorney, the City Manager or his designee is authorized to suspend a person from consideration for award of contracts, if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three (3) months.

(Ord. No. 86-3.2, § 21.3-601, 3-4-86)

Sec. 30-72. Grounds for debarment.

The causes or grounds for debarment, as authorized by section 30-71, include:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (2) Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a City contractor.

- (3) Conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals.
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the City Manager or his designee to be so serious as to justify debarment action:
 - a. Deliberate failure, without good cause, to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- (5) Any other cause the City Manager or his designee determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for cause and violation of the ethical standards set forth in this chapter.

(Ord. No. 86-3.2, § 21.3-601, 3-4-86)

Sec. 30-73. Written decision required; contents of decision.

The City Manager or his designee shall issue a written decision to debar or suspend pursuant to this article. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning judicial or administrative review.

(Ord. No. 86-3.2, § 21.3-602, 3-4-86)

Sec. 30-74. Copy of decision to be furnished person involved.

A copy of the decision required by section 30-73 shall be mailed or otherwise furnished immediately to the debarred or suspended person.

(Ord. No. 86-3.2, § 21.3-603, 3-4-86)

Sec. 30-75. Finality of decision.

A decision under section 30-73 shall be final and conclusive, unless the debarred or suspended person, within ten (10) days after the receipt of the decision, takes an appeal to the Council or commences a timely action in court in accordance with applicable law.

(Ord. No. 86-3.2, § 21.3-604, 3-4-86)

Secs. 30-76--30-86. Reserved.

ARTICLE IV. REMEDIES OF BIDDERS, OFFERORS AND CONTRACTORS

Sec. 30-87. Ineligibility.

- (a) Any bidder, offeror or contractor refused permission to, or disqualified from, participating in public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final, unless the bidder, offeror or contractor appeals within thirty (30) days of receipt by invoking administrative appeals procedures or by instituting legal action as provided in this article.
- (b) If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility.

(Ord. No. 86-3.2, § 21.3-701, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-63.

Sec. 30-88. Appeal of denial of withdrawal of bid.

- (a) A decision denying withdrawal of a bid under the provisions of section 30-49 shall be final and conclusive, unless the bidder appeals the decision within ten (10) days after receipt of the decision by invoking administrative appeals procedures or by instituting legal action as provided in this article.
- (b) If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of section 30-49, prior to appealing, shall deliver to the City a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- (c) If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

(Ord. No. 86-3.2, § 21.3-702, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-64.

Sec. 30-89. Determination of nonresponsibility.

- (a) Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days by invoking administrative appeals procedures or by instituting legal action as provided in this article.
- (b) If, upon appeal, it is determined that the decision of the City official was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the City official was arbitrary or capricious, the relief shall be as set forth in section 30-90(b).
- (c) A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section and may not protest the award or proposed award under section 30-90.
- (d) Nothing contained in this section shall be construed to require the City, when

procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

(Ord. No. 86-3.2, § 21.3-703, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-65.

Sec. 30-90. Protest of award or decision to award.

- (a) Any bidder or offeror who desires to protest the award of or decision to award, a contract shall submit such protest in writing to the City official who made the decision no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award shall submit such protest in the same manner no later than ten (10) days after posting or publication of the notice of such contract as provided in section 30-33 or 30-34. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which is subject to inspection under section 30-18, then the time within which the protest must be submitted shall expire ten (10) days after those records are available for inspection by such bidder or offeror under section 30-18, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. A written decision shall be made within ten (10) days stating the reasons for the action taken. This decision shall be final, unless the bidder or offeror appeals within ten (10) days of the written decision by invoking administrative appeals procedure or by instituting legal action as provided in this article.
- (b) If, prior to an award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The City shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made, but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the City may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

(Ord. No. 86-3.2, § 21.3-704, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-66.

Sec. 30-91. Effect of appeal or protest upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

(Ord. No. 86-3.2, § 21.3-705, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-67.

Sec. 30-92. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

(Ord. No. 86-3.2, § 21.3-706, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-68.

Sec. 30-93. Contractual disputes.

- (a) Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. Written notice of the contractor's intention to file such claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
- (b) A procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing.
- (c) A contractor may not invoke administrative appeals procedures or institute legal action as provided in this article prior to receipt of the decision on the claim, unless the responsible City official fails to render such decision within the time specified in the contract.
- (d) The decision of the responsible City official shall be final and conclusive unless the contractor appeals such decision within six (6) months of the decision date by invoking administrative appeals procedures or by instituting legal action as provided in this article.

(Ord. No. 86-3.2, § 21.3-707, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-69.

Sec. 30-94. Administrative appeals procedure.

- (a) Protests or appeals made pursuant to sections 30-87 through 30-90 or 30-93 shall be in accordance with the following administrative procedures:
 - (1) Any bidder, offeror or contractor shall submit a written protest or letter of appeal to the City Manager, with a copy to the Director of Finance, within the time constraints as set forth in the section under which the appeal or protest is made.
 - (2) The written protest or appeal shall include the basis for the protest or appeal and the relief sought and whether the bidder, offeror or contractor wishes to have a hearing with respect to the protest or appeal.

- (3) The City Manager or his designee shall render a written decision to the bidder, offeror or contractor within ten (10) days of receipt of the protest or appeal, if no hearing is necessary. If a hearing is necessary, it shall be held within ten (10) days of receipt of the written protest or appeal, and a final decision rendered not later than ten (10) days following the hearing.
 - (4) The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent or arbitrary or capricious or so grossly erroneous as to imply bad faith. No determination on an issue of law shall be final if appropriate legal action is instituted.
- (b) Any party to the administrative procedure shall be entitled to institute judicial review, if such action is brought within thirty (30) days of receipt of the written decision.

(Ord. No. 86-3.2, § 21.3-708, 3-4-86)

State law references: Authority to establish administrative appeals procedure and provisions similar to subsection (b) above, Code of Virginia, § 11-71.

Sec. 30-95. Legal actions.

- (a) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Circuit Court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious.
- (b) A bidder denied withdrawal of a bid under section 30-88 may bring an action in the Circuit Court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the City was clearly erroneous.
- (c) A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in section 30-33 or 30-34, whose protest of an award or decision to award under section 30-90 is denied, may bring an action in the Circuit Court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the invitation to bid or request for proposal.
- (d) If injunctive relief is granted, the court, upon request of the City, shall require the posting of reasonable security to protect the City.
- (e) A contractor may bring an action involving a contract dispute with the City in the Circuit Court.
- (f) A bidder, offeror or contractor need not utilize administrative appeals procedure as provided in section 30-94, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction, unless the Council agrees otherwise.

- (g) Nothing herein shall be construed to prevent the City from instituting legal action against a contractor.

(Ord. No. 86-3.2, § 21.3-709, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-70.

Secs. 30-96--30-106. Reserved.

ARTICLE V. ETHICS IN PUBLIC CONTRACTING

Sec. 30-107. Definitions.

For the purposes of this article, certain words and terms shall have the meanings set forth below:

Committee on Administrative Service Ethics shall mean a committee appointed by the City Manager dealing with administrative service ethics of City employees under the supervision of the City Manager.

Immediate family shall mean a spouse, children, parents, brothers and sisters and any other person living in the same household as the employee.

Official responsibility shall mean administrative or operating authority, whether immediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction or any claim resulting therefrom.

Pecuniary interest arising from the procurement shall mean a material financial interest, as defined in the Comprehensive Conflict of Interests Act (§ 2.1-599 et seq., Code of Virginia).

Procurement transaction shall mean all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

Public employee shall mean any person employed by the City, the Council or any Constitutional Officer of the City and shall also mean any elected official or appointed member of the Council.

(Ord. No. 86-3.2, § 21.3-802, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-73.

Sec. 30-108. Application of State law.

Ethics in public contracting is governed by the Comprehensive Conflict of Interests Act (sections 2.1-599--2.1-634, Code of Virginia).

(Ord. No. 86-3.2, § 21.3-801, 3-4-86)

Sec. 30-109. Interpretations of article as to specific circumstances.

Employees or officers of the City may request interpretations of this article, which may be applicable to specific circumstances, from the Committee on Administrative

Service Ethics.

(Ord. No. 86-3.2, § 21.3-810, 3-4-86)

Sec. 30-110. Penalty for violation of article.

Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any fine or penalty imposed for such violation, shall forfeit his employment.

(Ord. No. 86-3.2, § 21.3-809, 3-4-86)

Cross references: Penalty for Class 1 misdemeanor, § 1-11.

State law references: Similar provisions, Code of Virginia, § 11-80.

Sec. 30-111. Conflict of interests generally.

Except as may be specifically allowed by provisions of the Comprehensive Conflict of Interests Act (§§ 2.1-599--2.1-634, Code of Virginia), no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the governing body when the employee knows that:

- (1) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or
- (2) The employee, the employee's partner or any member of the employee's immediate family holds a position with a bidder, offeror or contractor, such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent; or
- (3) The employee, the employee's partner or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (4) The employee, the employee's partner or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

(Ord. No. 86-3.2, § 21.3-803, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-74.

Sec. 30-112. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the City, unless the employee, or former employee, provides written notification to the City Manager prior to commencement of employment by that bidder, offeror or contractor.

(Ord. No. 86-3.2, § 21.3-805, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-76.

Sec. 30-113. Gifts by bidders, offerors, contractors or subcontractors.

No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

(Ord. No. 86-3.2, § 21.3-806, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-77.

Sec. 30-114. Solicitation or acceptance of gifts by public employees.

No public employee having official responsibility for a procurement transaction shall solicit, demand, accept or agree to accept, from a bidder, offeror, contractor or subcontractor, any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The City may recover the value of anything conveyed in violation of this section.

(Ord. No. 86-3.2, § 21.3-804, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-75.

Sec. 30-115. Kickbacks.

- (a) No contractor or subcontractor shall demand or receive, from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- (b) No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- (c) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- (d) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the City and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

(Ord. No. 86-3.2, § 21.3-807, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-78.

Sec. 30-116. Purchase of building materials, etc., from architect or engineer.

Except in cases of emergency, no building materials, supplies or equipment for

any building or structure constructed by or for the City shall be sold by or purchased from any person employed as an independent contractor by the City to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association or corporation in which such architect or engineer has a pecuniary interest.

(Ord. No. 86-3.2, § 21.3-808, 3-4-86)

State law references: Similar provisions, Code of Virginia, § 11-79.